



Lawrence S. Lustberg
Director

Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Direct: 973-596-4731 Fax: 973-639-6285
llustberg@gibbonslaw.com

March 10, 2023

VIA CM/ECF

Honorable John M. Vazquez
United States District Judge
Frank R. Lautenberg U.S. Post Office & Courthouse
2 Federal Square
Newark, New Jersey 07102

Re: *United States ex rel. Simpson v. Bayer Corp., et al.*,
Civ. No. 05-3895 (D.N.J.) (JMV) (LDW): Extension Request

Dear Judge Vazquez:

This Firm, along with Sidley Austin LLP, represents Bayer Corporation, Bayer Healthcare Pharmaceuticals Inc., Bayer Healthcare LLC and Bayer AG (together, "Bayer") in the above-referenced matter. We write, in lieu of a more formal application, to most respectfully request a thirty-day extension, until May 8, 2023, to respond to the pending fee petitions filed by Relator's current and prior counsel. [ECF Nos. 409-415, 420]. It is our understanding that Relator's counsel objects to this request.

In June 2021, Bayer, Relator's Counsel, and the Government initially reached a "resolution in principal," for Relators' False Claims Act and Retaliation claims against Bayer in both the New Jersey and Minnesota Actions. On December 14, 2022, the Court entered an order dismissing the case and ordered that any claims for attorneys' fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d) and (h)(2) and Fed. R. Civ. P. 54 must be filed by January 6, 2023. ECF No. 407. The Court did not set a specific date for Bayer's response.

Accordingly, on January 6, 2023, more than 18 months after the matter was resolved in principle, Kessler Topaz Meltzer & Check, G.C. Robinson, and Olshan Frome & Wolosky LLP filed separate fee petitions on the New Jersey docket, as did the estate of Robert W. Sadowski, and Stone & Magnanini LLP. On the Minnesota docket, Kessler Topaz Meltzer & Check, G.C. Robinson, and Olshan Frome & Wolosky LLP all filed separate petitions for attorneys' fees, expenses and costs. All told, Bayer was presented with eight separate fee petitions, totaling thousands of pages and requesting over \$48,000,000 in fees, expenses, and costs.

On January 23, 2023, Your Honor granted Bayer's unopposed request to file its response to the fee petitions by April 6, 2023. ECF No. 422. Since the entry of that Order, and, as directed by the Court, the parties have engaged in mediation before the Honorable Dennis M. Cavanaugh. ECF No. 423. The parties have successfully reached resolution in one fee application and hope to settle others in the near future, but those settlements have, of course,

GIBBONS P.C.

Honorable John M. Vazquez
March 10, 2023
Page 2

turned on the analysis of the fee applications. To that end, Bayer promptly retained an expert, who has been very actively reviewing and analyzing the fee petitions for reasonableness; his analyses, as they have become available, have been critical in informing Bayer's settlement offers in the mediation process.

In consideration of the substantial amount of time Relator's had to prepare their comprehensive submissions—18 months—Bayer's 30-day request is modest and proportionate, and good cause exists to grant Bayer's request. The aggregate amounts sought by the fee petitions represent very significant monetary exposure that warrants close attention, which, as noted above, is well underway. In addition, the eight petitions are not only collectively thousands of pages long, but they also include hundreds of pages of time sheets, which must be reviewed line by line under the prevailing caselaw. *Evans v. Port Auth. of New York & New Jersey*, 273 F.3d 346, 361 (3d Cir. 2001). For one of the fee petitions, this requires the review of approximately 30,000 individual line items and a comparison of those entries to multiple years of pleadings and entries provided by other firms that represented the Relator. The sheer number of timekeepers, the length of time involved, and the vagueness of the time entries all combine to make this a very time-intensive process. Nonetheless, Bayer's expert has been diligently reviewing all of the materials and currently estimates that he will conclude his assessment and complete his report by April 7, 2023.

Bayer's response is currently due on April 6, 2023. An additional 30 days to prepare its opposition will not delay prompt resolution of this fee petition. And meanwhile, Bayer will continue to engage in the settlement process, whether through mediation or otherwise. Indeed, another mediation session is scheduled for later this month.

Bayer, therefore, respectfully requests that the Court grant the extension of time described above. If Your Honor has any questions or concerns, please do not hesitate to contact me. Otherwise, for the convenience of the Court, we have provided a space below for Your Honor to "So order" the relief requested.

Thank you very much for your kind consideration of this matter.

Respectfully submitted,

s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq.
GIBBONS, P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4731

GIBBONS P.C.

Honorable John M. Vazquez
March 10, 2023
Page 3

SO ORDERED.

Dated: March 13, 2023

No further extensions will be permitted.


Hon. John M. Vazquez, U.S.D.J.